

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KELLY D. SCHICK,

Plaintiff,

v.

ORDER
07-CV-629

ERIC W. OYER,

Defendant.

This case arises from a car accident that occurred in Pennsylvania between the plaintiff, Kelly D. Schick, a New York resident, and the defendant, Eric W. Oyer, a Pennsylvania resident. The plaintiff originally brought the case in New York state court, but it was dismissed for lack of personal jurisdiction. Plaintiff then brought the case here and the defendant moved to dismiss for lack of personal jurisdiction. The case was referred to Magistrate Judge Leslie G. Foschio pursuant to 28 U.S.C. § 636(b)(1). On May 1, 2008, Magistrate Judge Foschio filed a Report and Recommendation, recommending that defendant's motion to dismiss be granted.

Plaintiff filed objections to the Report and Recommendation on May 30, 2008. Defendant filed a response on June 5, 2008. Plaintiff filed a reply on June 27, 2008. Oral argument on the objections was held on September 19, 2008.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions of the parties and hearing argument from counsel, the Court adopts the proposed findings of the Report and Recommendation. The Court agrees with Magistrate Judge Foschio's recommendation that the case be dismissed because: (1) there is no basis under the New York long-arm statute, N.Y. Civ. Prac. L. & R. § 301, for personal jurisdiction over the defendant; and (2) under the doctrine of collateral estoppel, the plaintiff is precluded from relitigating the personal jurisdiction issue in the instant action.

Accordingly, for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation and herein, the Court grants defendant's motion to dismiss for lack of personal jurisdiction. The Clerk of Court shall take all steps necessary to close the case.

SO ORDERED.

s/ Richard J. Arcara
HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: September 26, 2008